

Chapter 15

Dishonored Instruments

7-15-1 Definitions -- Civil liability of issuer -- Notice of action -- Collection costs -- Exemptions.

(1) As used in this chapter:

(a) "Check" means a payment instrument on a depository institution including a:

- (i) check;
- (ii) draft;
- (iii) order; or
- (iv) other instrument.

(b) "Issuer" means a person who makes, draws, signs, or issues a check, whether as corporate agent or otherwise, for the purpose of:

- (i) obtaining from any person any money, merchandise, property, or other thing of value; or
- (ii) paying for any service, wages, salary, or rent.

(c) "Mailed" means the day that a notice is properly deposited in the United States mail.

(2)

(a) An issuer of a check is liable to the holder of the check if:

(i) the check:

- (A) is not honored upon presentment; and
- (B) is marked "refer to maker";

(ii) the account upon which the check is made or drawn:

- (A) does not exist;
- (B) has been closed; or
- (C) does not have sufficient funds or sufficient credit for payment in full of the check; or

(iii)

(A) the check is issued in partial or complete fulfillment of a valid and legally binding obligation; and

(B) the issuer stops payment on the check with the intent to:

- (I) fraudulently defeat a possessory lien; or
- (II) otherwise defraud the holder of the check.

(b) If an issuer of a check is liable under Subsection (2)(a), the issuer is liable for:

- (i) the check amount; and
- (ii) a service charge of \$20.

(3)

(a) The holder of a check that has been dishonored may:

- (i) give written or oral notice of dishonor to the issuer of the check; and
- (ii) waive all or part of the service charge imposed under Subsection (2)(b).

(b) Notwithstanding Subsection (2)(b), a holder of a check that has been dishonored may not collect and the issuer is not liable for the service charge imposed under Subsection (2)(b) if:

- (i) the holder redeposits the check; and
- (ii) that check is honored.

(4) If the issuer does not pay the amount owed under Subsection (2)(b) within 15 calendar days from the day on which the notice required under Subsection (5) is mailed, the issuer is liable for:

- (a) the amount owed under Subsection (2)(b); and
- (b) collection costs not to exceed \$20.

- (5)
 - (a) A holder shall provide written notice to an issuer before:
 - (i) charging collection costs under Subsection (4) in addition to the amount owed under Subsection (2)(b); or
 - (ii) filing an action based upon this section.
 - (b) The written notice required under Subsection (5)(a) shall notify the issuer of the dishonored check that:
 - (i) if the amount owed under Subsection (2)(b) is not paid within 15 calendar days from the day on which the notice is mailed, the issuer is liable for:
 - (A) the amount owed under Subsection (2)(b); and
 - (B) collection costs under Subsection (4); and
 - (ii) the holder may file civil action if the issuer does not pay to the holder the amount owed under Subsection (4) within 30 calendar days from the day on which the notice is mailed.
- (6)
 - (a) Except as provided in Section 7-23-401, if the issuer has not paid the holder the amounts owed under Subsection (4) within 30 calendar days from the day on which the notice required by Subsection (5) is mailed, the holder may offer to not file civil action under this section if the issuer pays the holder:
 - (i) the amount owed under Subsection (2)(b);
 - (ii) the collection costs under Subsection (4);
 - (iii) an amount that:
 - (A) is equal to the greater of:
 - (I) \$50; or
 - (II) triple the check amount; and
 - (B) does not exceed the check amount plus \$250; and
 - (iv) if the holder retains an attorney to recover on the dishonored check, reasonable attorney's fees not to exceed \$50.
 - (b)
 - (i) Notwithstanding Subsection (6)(a), all amounts charged or collected under Subsection (6)(a)(iii) shall be paid to and be the property of the original payee of the check.
 - (ii) A person who is not the original payee may not retain any amounts charged or collected under Subsection (6)(a)(iii).
 - (iii) The original payee of a check may not contract for a person to retain any amounts charged or collected under Subsection (6)(a)(iii).
- (7)
 - (a) A civil action may not be filed under this section unless the issuer fails to pay the amounts owed:
 - (i) under Subsection (4); and
 - (ii) within 30 calendar days from the day on which the notice required by Subsection (5) is mailed.
 - (b) Subject to Subsections (7)(c) and (d) and except as provided in Section 7-23-401, in a civil action the issuer of the check is liable to the holder for:
 - (i) the amount owed under Subsection (2)(b);
 - (ii) the collection costs under Subsection (4);
 - (iii) interest;
 - (iv) court costs;
 - (v) reasonable attorney fees; and
 - (vi) damages:

- (A) equal to the greater of:
 - (I) \$100; or
 - (II) triple the check amount; and
- (B) not to exceed the check amount plus \$500.
- (c) If an issuer is held liable under Subsection (7)(b), notwithstanding Subsection (7)(b), a court may waive any amount owed under Subsections (7)(b)(iii) through (vi) upon a finding of good cause.
- (d) If a holder of a check violates this section by filing a civil action under this section before 31 calendar days from the day on which the notice required by Subsection (5) is mailed, an issuer may not be held liable for an amount in excess of the check amount.
- (e)
 - (i) Notwithstanding Subsection (7)(b), all amounts charged or collected under Subsection (7)(b)(vi) shall be paid to and be the property of the original payee of the check.
 - (ii) A person who is not the original payee may not retain any amounts charged or collected under Subsection (7)(b)(vi).
 - (iii) The original payee of a check may not contract for a person to retain any amounts charged or collected under Subsection (7)(b)(vi).
- (8) This section may not be construed to prohibit the holder of the check from seeking relief under any other applicable statute or cause of action.
- (9)
 - (a) Notwithstanding the other provisions of this section, a holder of a check is exempt from this section if the holder is:
 - (i) a depository institution; or
 - (ii) a person that receives a payment on behalf of a depository institution.
 - (b) A holder exempt under Subsection (9)(a) may contract with an issuer for the collection of fees or charges for the dishonor of a check.

Amended by Chapter 96, 2008 General Session

7-15-2 Notice -- Form.

- (1)
 - (a) "Notice" means notice given to the issuer of a check either orally or in writing.
 - (b) Written notice may be given by United States mail that is:
 - (i) first class; and
 - (ii) postage prepaid.
 - (c) Notwithstanding Subsection (1)(b), written notice is conclusively presumed to have been given when the notice is:
 - (i) properly deposited in the United States mail;
 - (ii) postage prepaid;
 - (iii) certified or registered mail;
 - (iv) return receipt requested; and
 - (v) addressed to the signer at the signer's:
 - (A) address as it appears on the check; or
 - (B) last-known address.
- (2) Written notice under Subsection 7-15-1(5) shall take substantially the following form:
 - "Date: ____
 - To: ____

You are hereby notified that the check(s) described below issued by you has (have) been returned to us unpaid:

Check date: _____

Check number: _____

Originating institution: _____

Amount: _____

Reason for dishonor (marked on check): _____

In accordance with Section 7-15-1, Utah Code Annotated, you are liable for this check together with a service charge of \$20, which must be paid to the undersigned.

If you do not pay the check amount and the \$20 service charge within 15 calendar days from the day on which this notice was mailed, you are required to pay within 30 calendar days from the day on which this notice is mailed:

- (1) the check amount;
- (2) the \$20 service charge; and
- (3) collection costs not to exceed \$20.

If you do not pay the check amount, the \$20 service charge, and the collection costs within 30 calendar days from the day on which this notice is mailed, in accordance with Section 7-15-1, Utah Code Annotated, an appropriate civil legal action may be filed against you for:

- (1) the check amount;
- (2) interest;
- (3) court costs;
- (4) attorneys' fees;
- (5) actual costs of collection as provided by law; and
- (6) damages in an amount equal to the greater of \$100 or triple the check amount,

except:

(a) that damages recovered under this Subsection (6) may not exceed the check amount by more than \$500; and

(b) you are not liable for these damages for a check used to obtain a deferred deposit loan.

In addition, the criminal code provides in Section 76-6-505, Utah Code Annotated, that any person who issues or passes a check for the payment of money, for the purpose of obtaining from any person, firm, partnership, or corporation, any money, property, or other thing of value or paying for any services, wages, salary, labor, or rent, knowing it will not be paid by the drawee and payment is refused by the drawee, is guilty of issuing a bad check.

The civil action referred to in this notice does not preclude the right to prosecute under the criminal code of the state.

(Signed) _____

Name of Holder: _____

Address of Holder: _____

Telephone Number: _____

"

- (3) Notwithstanding the other provisions of this section, a holder exempt under Subsection 7-15-1(9) is exempt from this section.

Amended by Chapter 324, 2010 General Session

7-15-3 Liability of financial institution upon wrongful dishonor.

If a person is liable to a holder under Section 7-15-1 or under a contract with a depository institution as provided in Subsection 7-15-1(9), and the liability is proximately caused by a financial institution's wrongful dishonor under Section 70A-4-402, any award against the financial institution under Section 70A-4-402 shall include all amounts awarded against the person to the holder under:

- (1) Section 7-15-1; or
- (2) the contract with the depository institution as provided in Subsection 7-15-1(9).

Amended by Chapter 9, 2001 General Session